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IN THE

Supreme Court of the United States

October Term, 1943

Nos. 38 and 39

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

To begin with we are not dealing with a regulation that has acquired any sanctity from long-continued application (Gov't. Brief, pp. 8, 9-10). This regulation was challenged immediately. Petitioner made its first payment July 31, 1934 and protested that payment and every payment made thereafter. According to the statement in the Government's

memorandum filed in opposition to our petition for a writ, one hundred claims for refunds based upon the invalidity of the regulation were filed with the Commissioner of Internal Revenue. As only those who had domestically processed oils on hand on May 10, 1934 were affected by the regulation it would seem that the challenge to the regulation was general. In 1937 in the *Armour* case the regulation was declared invalid by the United States District Court for the Eastern Division of the Northern District of Illinois. The Government appealed but dropped the appeal and paid the judgment with interest. In 1938 the United States District Court for the Southern District of Ohio in the *Cincinnati Soap Co.* case held the regulation invalid on a demurrer by the Government to taxpayer's complaint, and from that decision the Government has never appealed. The validity of the regulation has been challenged in suits brought by six different taxpayers. In three of them (counting the instant cases as one) the Government has so far won, with a final judgment in two of the three; in three of the cases the Government has so far lost, and in one of the latter three by a judgment which is now final.

In the next place we are not dealing with a regulation that has been ratified by Congress. The Government cites the rule that reenactment without substantial change of a statutory provision may, in the absence of persuasive indication to the contrary, be regarded as legislative approval of a prior Treasury regulation and it argues that this rule is applicable to the facts of the present cases since "Congress, on one occasion, in 1935, has enacted legislation directly relating to the oils designated in Section 602½, and on five occasions, in 1936, 1938, 1941 and twice in 1942, has amended Section 602½ or its corresponding provisions in the Internal Revenue Code without any indication of disapproval of the Regulations" (Gov't. Brief, pp. 29, 30).

We have three observations with respect to this argument:

(a)

The reason for the rule is that if *in the continued application of the reenacted statutory* provision Congress intends that the reenacted provision shall have a different meaning than that given it in the Treasury regulation, it is presumed Congress will so indicate in the reenacted statute. However, the Treasury regulation here involved was not one of continuing application under the reenacted statute, but involved only the oils which had been domestically processed prior to the inception of the tax and were on hand on the date the tax became effective. In its brief in opposition to the Petition for Writs of Certiorari the Government was at particular pains to point out on page 4 that "The problem of statutory construction here involved concerns only stocks of oil on hand on May 10, 1934 *and is thus not of continuing importance.*" In all of the cases where this Court has applied the rule of reenactment without substantial change, the Treasury regulation in question has been of "continuing importance" under the reenacted statute. Where the regulation, as in the cases at bar, involves only the rights of taxpayers at the inception of a tax and will not be a recurring problem under the reenacted statutory provision, we submit that there is no reason why there should be imputed to Congress an intent to approve such a regulation.

(b)

By no stretch of the imagination can the enactment of Section 402 of the Revenue Act of 1935 be regarded as a reenactment of Section 602½ and a ratification of the regulation. That section simply imposed a compensatory im-

port duty upon articles made wholly or in chief value from the oils specified in Section 602½ (Gov't. Brief, App. p. 40). The amendments to Section 602½ or its corresponding provisions in the Internal Revenue Code which were enacted in the acts of 1938, 1941 and 1942 merely enlarged the exemption of palm oil in certain of its uses and provided for the payment over to Guam and Samoa of the tax collected on oils from those Islands and for the temporary suspension of the two-cent surtax on coconut oil of non-Philippine origin (Gov't. Brief, App. pp. 43-45). The Government does not seriously argue that any of these amendments constitute appropriate instances for the application of the rule of approval by reenactment without substantial change, and all these amendments were passed long after the regulation had spent its force.

(c)

With respect to the 1936 Amendment of Section 602½ in Section 702 of the Revenue Act of 1936, we have already pointed out that this amendment cannot constitute legislative approval for the reason, as the Court below correctly held, that the statute was not reenacted without substantial change; and for the further reason that the express language of the amendment in exemption clauses (1) and (2) thereof recognizes that there would be "previous first domestic processings *taxed under this section*", *i. e.*, processings occurring after May 10, 1934, and "previous first domestic processings" which were untaxed, *i. e.*, those occurring prior to May 10, 1934, which is wholly inconsistent with the Treasury regulation in question. (Pet. Orig. Brief, pp. 51-59.)

Furthermore, the regulation in question affects only the domestically processed oils on hand at the inception of the

tax on May 10, 1934. It strains credulity to think that Congress would have concerned itself to approve such regulation two years later in 1936 when such supply of domestically processed oils on hand May 10, 1934 must have been practically exhausted.

The Government's Statement of Petitioner's Position.

The Government says:

> "The taxpayer's position, as we understand it, is that the taxable event is the first domestic processing occurring after the effective date of the Act, provided that the oils have not received any previous domestic processing" (Gov't. Brief, p. 4).

That is not the taxpayer's position. The event on which the tax is imposed is "the first domestic processing" defined as "the first use in the United States in the manufacture or production of an article intended for sale." If that event occurs after May 10, 1934, it is a taxable event. If it occurs before May 10, 1934 it is not a taxable event. The statute is not retroactive.

Again the Court is told:

> "It is the taxpayer's position, as we understand it, that the statutory 'first domestic processing' *means* the first domestic processing occurring after the effective date of the Act, when, but only when, there has been no previous domestic processing" (Gov't. Brief, p. 8—Italics ours.)

The statutory phrase "the first domestic processing" *never*, under any circumstances, "*means*" the first domestic processing occurring after the effective date of the Act. It may in a given case *be* that processing, but in the instant case

it was not. "The first domestic processing" *means* what the statute says it means—"the first use in the United States in the manufacture or production of an article intended for sale."

The Government makes the astonishing statement that it is the petitioner and not the Government which seeks to qualify the language of the statute. Thus at page 19 we read:

> "The taxpayer, unlike the Government, would add the condition that the first domestic processing occurring after the effective date of the Act must also be the first in point of time without regard to the effective date."

At pages 9 and 27 are similar statements.

Of course that is without any basis in fact. It is the Government which seeks to qualify "the first domestic processing" by adding the Commissioner's interpolation—"on and after the effective date of the Act."

The Government apparently does not want to call attention to the fact that its construction is a qualification of the statutory definition. It quotes the statutory definition on page 11 of its brief but never thereafter mentions that uncomfortable definition again, except to say at the bottom of that page that "the meaning and effect to be attributed to the word 'first' * * * is not further illuminated by the foregoing definition." What further illumination is needed!

The Government's Assumptions.

The Government's brief rests in large part upon an assumption of the thing to be proved. The Government says, for example, that "whatever its meaning 'first domestic processing' must be defined in terms of a taxable event."

What the Government is here saying is that the phrase must be so defined as to make every first domestic processing taxable, which is to assume what is to be proved (Gov't. Brief, p. 6). It must be defined as the statute defines it—"the first use in the United States in the manufacture or production of an article intended for sale."

At page 7 of the Government's brief is this:

> "Properly analyzed, the question is whether there is anything in the statute which conflicts with the application of the tax to all first domestic processings occurring after the effective date of the Act; * * *."

Here again is the assumption that the tax is to be taken as extending to every domestic processing which happened to be the first after May 10, 1934 unless the petitioner can show something in the statute which conflicts with that construction. Not that there is any difficulty in showing that. The statutory definition conflicts with the Government's construction. And outside the language of the section its entire history conflicts with that construction, as does the intent of Congress disclosed in the debates. In the statement that "the question is whether there is anything in the statute which conflicts with the application of the tax to all first domestic processings occurring after the effective date of the Act" is the further implication that taxpayer's construction does not so apply the Act. That, of course, is not true. Every domestic processing which occurs after the date of the Act and which is in fact the first domestic processing is taxable. The question is whether a second domestic processing may be taxed if it happens to be the first occurring after that date.

Again the Government says:

> "If Congress had intended to attach some additional condition or qualification to the taxable event, such

> as a provision that the oils must not have received a domestic processing before the effective date of the Act, it would presumably have used express language manifesting this intention" (Gov't. Brief, p. 14).

This assumes that in the absence of such "additional condition or qualification" the domestic processing next after the effective date of the Act is the taxable processing notwithstanding it may not be *the first* domestic processing, which is an assumption and not proof that "first" means "first after the effective date of the Act."

On page 17 of its brief the Government makes this statement:

> "Whatever canons of statutory construction are to be invoked, the 'first domestic processing' of the specified oils must be defined in terms of a taxable event. Oils in combinations or mixtures are subjected to the tax where there has been no 'previous first domestic processing' with respect to them. Therefore, whatever the definition of 'first domestic processing,' oils in combinations or mixtures must pay a tax upon the first domestic processing of the combination or mixture unless they have previously paid their way."

What the Government means by this is that the term "first domestic processing" must be so defined as to make every first domestic processing taxable. There is no such compulsion. That is pure assumption.

On page 20 of the Government's brief is this argument: Because Philippine coconut oil and certain other coconut oil is specifically excluded from the additional tax of two cents a pound levied "upon the first domestic processing of coconut oil," "it is reasonable to assume" that Congress would similarly have excluded from the basic three cent tax oils which had been subjected to non-taxable domestic

processing prior to the effective date of the Act. That argument assumes that in the absence of such specific exclusion those oils are taxable. That is to say, it assumes that "first" means "first after the effective date of the Act." Otherwise there would be no necessity for a specific exclusion of a second domestic processing when the statute taxes only "the first."

Petitioner does not assert any exemption. The statute taxes only "the *first* use" of oils "in the manufacture or production of an article intended for sale" and second, third, fourth and fifth uses do not need exemption.

The Government's Argument with Respect to the Agricultural Adjustment Act.

Ignoring all the evidence in the Congressional debates that the tax under Section 602½ was the same processing tax as that to which the commodities were subjected which were included in the A. A. A., the Government insists that it does not follow from the identity of the language that "the first domestic processing" should be given the same construction in both acts. The brief states, at page 26:

> "* * * The Commissioner's interpretation of 'first domestic processing' under the Agricultural Adjustment Act was thus required by reasons peculiar to that Act, not present with respect to Section 602½."

The floor-stock tax in the Agricultural Adjustment Act may have given a further reason for giving to the phrase "the first domestic processing" its normal significance but it doesn't follow that in the absence of a floor-stock tax the phrase should not be given its normal significance. The presence in one act and the absence from the other of a floor-stock tax does not render the two acts *not in pari materia* in respect of the tax which is common to both and

was intentionally and consciously taken from the one and put into the other, with the intent of further effectuating the purposes of the prior act.

The Purpose of Section 602½.

It is stated at various places in the Government's brief that the purpose of the tax was both revenue and protection, but those who debated the bill in Congress (whose statements the Government ignores) agreed that it was not intended to raise revenue but that its purpose was to restrict imports. Its advocates were for it because its purpose was to restrict imports. Its opponents were against it for the same reason; they thought restriction of the importation of coconut oil was unfair to the Philippines. We again call attention to some of the extracts from the debates quoted in our original brief.

> "* * * it was thought * * * that as we were * * * limiting the production of our farmers that we might put some restriction on the commodities from abroad * * *." (Chairman Doughton of the Ways and Means Committee)
>
> "* * * a home market that would be protected against this pernicious flood of coconut and sesame oils." (Congressman Johnson)
>
> "* * * there are a good many Senators here who want to abide by the independence act, but, at the same time, they desire to put a fair limitation on imports." (Senator Harrison)
>
> "* * * the proponents of this tax are not expecting revenue but are seeking only to prevent the importation of coconut oil." (Congresswoman Kahn)
>
> "* * * I assert this excise tax to be nothing more or less than a prohibitive tariff * * *." (Congressman Welch)

"It is not understood why in this legislation we should seek to penalize the Philippines by restricting their imports to this country in oils * * *." (Congressman Hoeppel)

"The Senator from Pennsylvania (Senator Reed) knows, I am sure, that the primary purpose of this tax is not revenue, but its primary purpose is to discriminate against the Philippine people." (Senator Tydings)

"The primary purpose of the processing tax is to raise prices and not to raise revenue." (Senator Reed)

There is sufficient internal evidence in the section itself that the tax was not designed to raise revenue. The tax paid on the most important of the oils, Philippine coconut oil, was to be paid over to the Philippine Treasury. Palm oil used in the manufacture of tin plate was exempt because in that use it has no domestic competitor. And we may be sure that Congress would not have picked out for revenue taxation oils which are mostly used in the production of articles of food and the production of soap, both among the primary necessities.

This assumption that a purpose of the tax was to raise revenue underlies the Government's wholly fanciful idea as to the manner in which the language of the section was evolved. The Government says in effect on page 13 that Congress made up its mind to tax the "domestic processing" of these oils and, of course, contemplated the taxation of future processings only, but among those future processings it had to select the one to be taxed and so selected the first. Of course the fact is that Congress went through no such mental process. Congress decided to subject these oils to the same tax to which domestic products

with which they competed were already subject under the Agricultural Adjustment Act and took the tax from that Act, as was, which was a tax upon the first domestic processing in fact.

The Government disputes our contention that the extension of the tax to oils already in the hands of manufacturers on May 10, 1934 and already domestically processed and in the course of conversion into finished articles would effect no protection. (Obviously it would effect no restriction.) It is said that that contention leads to the conclusion that the levying of the processing tax on the first domestic processing of crude oils in this country on that date would likewise effect no protection—a *reductio ad absurdum.* (Gov't. Brief, p. 22.)

Domestically processed oils in the hands of manufacturers and already in the course of conversion into finished articles are not oils held for sale. The manufacturer will neither throw them away if they are taxed and replace them with domestic oils and fats (the oils involved in these cases were not thrown away) nor will they go out into the channels of trade to compete with American fats and oils. The competition ended when the manufacturer bought the foreign oils. Crude oils, on the other hand, in the hands of dealers and crushers must be sold and they will inevitably compete with American fats and oils so far as they are interchangeable. If they cost the dealer's vendee their market price (say 2½ cents per pound *) plus 3 cents for the privilege of using them, the competing American oil has only to meet an over-all price of 5½ cents instead of a price of 2½ cents.

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* It was stated in the debates in the House that in April, 1934 the price of coconut oil was 2½ cents.

The Phrase "no previous first domestic processing" in the 1934 Act.

A circumstance which appeared to the Circuit Court of Appeals for the Second Circuit, in the *Loose-Wiles Biscuit Company* case, to indicate that the Treasury regulation was "reasonable" (but which that Court expressly stated was not relied upon for any further conclusion) has been seized upon by the Government as a compelling circumstance inexorably leading to the Treasury Department's interpretation. The circumstance is this. The provision in the 1934 Act with reference to the taxation of mixtures and combinations is that they are taxable where there has been "no previous first domestic processing" of the contained oil. The argument is that the purpose of the limitation was to avoid double taxation; that it must therefore be assumed that "the first domestic processing" is synonymous with a taxable processing. If "the first domestic processing," the argument continues, means the earliest domestic processing whether taxed or not, it would have sufficed to provide that mixtures and combinations were taxable only where there has been "no previous domestic processing" of the contained oil, omitting the word "first" as being superfluous and "tautological." (Gov't. Brief, pp. 15-16.) There are several answers.

(a)

This is not in any case a circumstance that, in the words of Mr. Justice Holmes, "by ineluctable logic, requires the conclusion" derived therefrom by the Government, and certainly it cannot weigh against the plain evidence of the debates that Congress intended to levy on these foreign oils the same processing tax as that same Congress had previ-

ously imposed under the Agricultural Adjustment Act upon domestic products with which they compete, and against the conceded fact that the tax provided for in the earlier act was a tax on the first domestic processing in fact and not on the first domestic processing after the effective date of the tax. The evidence from the debates is set out in our original brief at pages 39-46 but is ignored by the Government.

(b)

Either construction of the phrase "the first domestic processing" gives complete immunity from double taxation, so that the purpose to effect that immunity points no more compellingly to one construction than to the other.

(c)

Taxpayer's construction gives quite as reasonable a result as that propounded by the Government and is consistent with the intent disclosed by the debates, which the Government's construction is not. The tax upon unmixed oils was on their "first domestic processing." If the earliest domestic processing of an oil had occurred *before* May 10, 1934, the oil was not, under taxpayer's construction, subject to the tax. Consistently with that, if the oil which had been thus first domestically processed prior to May 10, 1934 were introduced into a mixture, the mixture was not taxable because the oil itself was not taxable. And if the oil had been first domestically processed *after* May 10, 1934, the mixture was again not taxable—in that case because that would be double taxation of the contained oil. That is to say, the mixture was not to be taxable if the contained oil had received a "previous first domestic processing" regardless of the time when that occurred, because, regardless of

the time when that occurred, the oil itself would not be taxable. That is *precisely* what the statute says, without qualification.

That is likewise a complete answer to the contention that the Treasury interpretation is necessary to bring it about that oils and combinations of oils shall be treated alike (Gov't. Brief, pp. 17-18). Petitioner is not here falling into the Government's habit of assuming that its construction is right and arguing from that premise. What we are saying is that petitioner's construction does not result in unequal treatment of oils and mixtures. Mixtures are taxable only if the contained oil is taxable.

(d)

The draftsman of the Act would naturally follow the word "previous" with the phrase "first domestic processing" in its entirety and not with the phrase "domestic processing" because "the first domestic processing" is the term that is defined in the Act. It was nothing but ordinary good draftsmanship, involving no superfluity, to use the terminology which was so defined.

(e)

The Government can hardly afford to base an argument on the "tautology" alleged to reside in the 1934 Act if petitioner's construction is right. For there is a manifest tautology, if the Government's construction is right, in the phrase in the first exemption clause of the 1936 Amendment —"previous first domestic processing taxed under this section"—tautological because under the Government's construction every "first domestic processing" is taxable. The Government attempts to explain that away thus:

> "It thus seems clear that the phrase 'taxed under this section,' as it appears in clause (1) of paragraph (a) of the amendment, was inserted merely out of an abundance of caution, to make clear beyond any possible dispute that the statutory 'first domestic processing' is a taxable processing" (Gov't. Brief, p. 36).

Why then was not that same superlative caution employed in the second exemption clause where the exemption of mixtures is conditioned merely on "a previous domestic processing"? Why was not "abundance of caution" equally employed in drafting the original act if "previous first domestic processing" there means "previous domestic processing taxed under this section"? And if the word first is superfluous in the phrase "previous first domestic processing" in the 1934 Act, under our construction, it is obviously equally superfluous in the phrase "previous first domestic processing taxed under this section" in the 1936 Amendment, under the Government construction; "previous domestic processing *taxed under this section*" would suffice.

The fact is, as we have stated, that there is no useless tautology either in the 1934 Act or the 1936 Amendment. The use of the complete phrase "previous first domestic processing" instead of "previous domestic processing" was merely the use in its entirety of the phrase the meaning of which was fixed by the statute. Furthermore, the addition in the first exemption clause of the 1936 Amendment of the words "taxed under this section" is not tautological because those words were put there to distinguish "previous first domestic processings" that were taxed from those that were not. The addition of those words in the first exemption clause and not the second was not the bungling of a sloppy draftsman, employing an "abundance of caution" in one clause but none in the other. The two exemption

clauses, both new in the 1936 Amendment, were inserted by the Conference Committee at the same time. The second exemption clause relating to mixtures was conditioned on "a previous domestic processing," without further limitation because there was thus carried forward in substance, though in a new form, the provision with respect to mixtures in the original statute, enacted by the 72d Congress, which had obtained for more than two years. But with respect to fatty acids and salts there had been no provision in the original act. The 73d Congress could deal with them as it saw fit. And they were exempted only if they resulted from a "previous first domestic processing taxed under this section."

(f)

Certainly, even if taxpayer's construction could be thought to import a redundancy into the 1934 Act, that construction is not to be rejected for that reason against the overwhelming evidence to be found in the legislative history of Section 602½ and in the debates and committee reports that taxpayer's construction is precisely the construction which Congress contemplated and intended.

The Contention that Taxpayer's Construction Makes the Statute Retroactive.

On page 19 of the Government's brief, that contention is put this way:

> "• • • Fundamental to the taxpayer's theory, also, is the contention that the 'ordinary,' 'normal,' and 'literal' meaning of 'first' should be employed. (Pet. Br. 9-10) But the foregoing is inconsistent with the taxpayer's basic position that 'first domestic processing' cannot be taken so literally as to *refer to*

> *a taxable operation* occurring prior to the Act (Pet. Br. 60). Accordingly, the taxpayer could hardly mean that the statutory 'first domestic processing' includes a first domestic processing in point of time, which may have occurred prior to the effective date of the Act, for this would immediately raise the question whether the statute was intended to be retrospectively applied, and the taxpayer certainly does not concede that it should be." (Italics ours.)

On page 7 the argument is expressed thus:

> "* * * If, as the taxpayer maintains, 'first domestic processing' meant first in point of time, the statute on its face would require retrospective application, a result for which neither side contends."

In other words, if "first" means earliest, there is a rigorous necessity to stretch the statute so that it will apply to those "first domestic processings" which occurred before it took effect, because, according to the argument, the statute must be taken to apply to all first domestic processings. The above quotation from page 19 is a ridiculous perversion of "taxpayer's basic position." The statute "refers" to "the first domestic processing." If that occurs after its effective date, it is "a taxable operation"; if it has occurred before that date, it is not "a taxable operation," because statutes are applied prospectively and not retroactively.

The Alleged Inequalities Resulting from Petitioner's Construction.

The Government's brief, page 24, suggests an imaginary and extremely unlikely situation in which coconut oil is assumed to have been neutralized abroad and then imported, and in which the Government says Section 602½, as peti-

tioner construes it, might have worked a temporary inequitable result.

That is to say, in construing Section 602½ we are to fly in the face of the usual and normal meaning of the language of the Section and to disregard its source, legislative history and purpose because the Government is able to think up a hypothetical case in which the construction for which the Government contends would relieve a temporary inequity between hypothetical processors. The case is hypothetical to the degree that seldom, if ever, is imported coconut oil neutralized before importation. This for cost reasons. There are few, if any, tax or import laws which do not result in some temporary inequalities at their inception. Such always result when new tariff duties are enacted.

The Contention that the Treasury Regulation Has Not the Practical Effect in this Litigation of a Floor-Stock Tax.

We have noted in our original brief that the Ways and Means Committee was urged to include a floor-stock tax in Section 602½ but it did not do so, and that the Government has by construction supplied in part that intentional omission. With respect to the oils involved in this suit—and all oils domestically processed prior to May 10, 1934 which on that date still remained oils—the Government's construction has the same practical effect as though a floor-stock tax were enacted. The Government argues (p. 27) that "no question of this nature is presented here" because the regulation does not "reach articles *wholly processed* at the effective date of the Act." The fact that the regulation does not cover the whole field which would be covered by a floor-stock tax is no answer to the argument that the regulation does cover a part of the field. If a floor-stock tax had been enacted in Section 602½, the oils involved in this suit

would have been subject to such tax (see Art. 7, Reg. 82, Pet. Orig. Brief, p. 17). And the Government, by regulation interpreting "first" to mean first after May 10, 1934, has accomplished the same practical effect with respect to these processed oils notwithstanding Congress elected not to levy a floor-stock tax in Section 602½.

The Government's Contention that Under the 1936 Amendment (1) Fatty Acids and Salts and (2) Combinations and Mixtures Are Treated the Same.

The Government's brief says:

> "*Even on the taxpayer's view, the domestic processing of a fatty acid or salt occurring after the 1936 amendment would not escape taxation unless a prior tax had been paid with respect to that fatty acid or salt.* Yet the same fatty acid or salt, under clause (2), would escape taxation when domestically processed after the 1936 amendment if combined or mixed with some other product, even though no prior tax had been paid on the fatty acid or salt" (Gov't. Brief, p. 37).

Again the Government attributes to the taxpayer a view which the taxpayer does not hold. For example, if after the importation of a fatty acid it was subjected to a first domestic processing prior to August 21, 1936 that would not be taxed because the processing of acid was not taxable before that date; and if after that date it was subjected to another processing, that processing would not in taxpayer's view be taxable because that would be the second domestic processing of that fatty acid—not "the first." Thus the premise of the Government's argument does not represent the taxpayer's view. The final conclusion at which the Government arrives is this:

> "Under the proper view both clauses (1) and (2) refer to a taxable processing; hence, the fatty acids, salts and oils, whether in or out of a combination or mixture, are treated exactly the same" (Gov't. Brief, p. 37).

That is to say, notwithstanding that Congress, in explicit language in clause (1) conditioned the exemption of fatty acids and salts upon their resulting from "a previous domestic processing *taxed under this section*" and in clause (2) conditioned the exemption of combinations or mixtures upon there being a "previous first domestic processing" of the oil ingredient, the Government concludes that the two clauses should be construed to have the same meaning. Why, if both clauses have the same meaning, did Congress take the trouble to write into the statute two exemption clauses. One exemption clause would have sufficed to cover fatty acids and salts, combinations and mixtures alike. If fatty acids and salts are to be treated exactly the same as combinations or mixtures, Congress was enacting useless verbiage in writing into the statute two exemption clauses —one with the limitation "taxed under this section" and one without such limitation.

Respectfully submitted,

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